

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-6889**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRIAN LEE FOSTER,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:08-cr-00087-FL-1; 5:11-cv-00439-FL)

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Submitted: October 22, 2013

Decided: October 25, 2013

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Before WILKINSON, NIEMEYER, and THACKER, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Brian Lee Foster, Appellant Pro Se. Eric David Goulian, OFFICE OF THE UNITED STATES ATTORNEY, Rudolf A. Renfer, Jr., Stephen Aubrey West, Assistant United States Attorneys, Raleigh, North Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brian Lee Foster seeks to appeal the district court's order accepting the recommendation of the magistrate judge and denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2013) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Foster has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Foster's motion to stay appellate proceedings as moot, and dismiss the appeal. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED